

GENERAL TERMS AND CONDITIONS OF SALE

1. Exclusivity of the general conditions.

Except to the extent ZEPHIR s.p.a. (**ZEPHIR**) and the other contracting party (the Purchaser) have executed an Authorized Distributor Agreement, which such terms shall take precedence, the present General Conditions apply to all contracts signed by **ZEPHIR** in the capacity of vendor of goods and/or services (the Products) and shall be deemed fully effective in relation to the Purchaser. The General Conditions shall apply generally and with exclusive force to all contracts signed by **ZEPHIR**. Any other conflicting or divergent condition of sale laid down by the Purchaser shall therefore be unacceptable, barring explicit acceptance in writing by **ZEPHIR**. The earlier of **ZEPHIR'S** commencement of performance or the Purchaser's receipt of any of the Products shall constitute acceptance of these Terms.

2. Conclusion of the contract; Changes/cancellation.

The contract shall be drawn up exclusively in one of the following forms: a) written deed signed by both contracting parties; b) exchange of correspondence between the contracting parties; c) "order" issued by the Purchaser and accepted expressly in writing by **ZEPHIR**, by means of an "order confirmation". Changes in specifications or designs to any Products, changes in delivery or performance schedules or reschedules or cancellations of orders are not permitted unless **ZEPHIR** has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Purchaser. Once ordered, products that are made to order, discontinued or custom may not be cancelled by the Purchaser. **ZEPHIR** reserves the right to cancel any purchase orders or releases thereunder, or terminate any agreement relating to purchase of Products, upon 10 days' notice to the Purchaser.

3. Modalities of delivery.

The Purchaser is obliged to specify in the order the place where the delivery of the Products is to take place. Unless otherwise agreed by the Parties, delivery of the Products is to be understood as ex-works (EXW Incoterms 2020) and the costs of despatch are, barring written agreement to the contrary between the parties, to be borne by the Purchaser. The date of delivery specified in the order confirmation is not binding on **ZEPHIR**, which can subsequently confirm it or alter it, according to its own actual needs. Barring agreement to the contrary between the parties, any delay in delivery of less than 60 (sixty) days shall not give the Purchaser the right to refuse delivery of the Products, nor to claim

damages, compensation of any kind or payment of penalties. The obligation to deliver the Products shall be deemed to have been duly performed at the time when the Products are delivered to the carrier. With the delivery of the Products to the carrier, **ZEPHIR** is expressly relieved from all liability for damage to, custody of and loss of the Products. Any liability on the part of **ZEPHIR** for damages resulting from early, late or failed delivery, total or partial, is hereby excluded.

4. Payment of the Price.

Unless otherwise agreed by the Parties, the agreed price must be paid within the time-limit indicated in the contract or in the order confirmation or in the invoice issued by **ZEPHIR** and forwarded to the Purchaser. All the prices quoted are to be understood as being exclusive of taxes, tariffs and other duties. The VAT which applies shall be at the rate current at the time of delivery. In the event of late payment, the Purchaser shall be obliged to pay the interest accrued in accordance with Legislative Decree no. 192/2012. Any delay or irregularity in payment gives **ZEPHIR** the right to suspend orders received or to terminate contracts in progress, even if they do not relate to the payments in question, and also the right to compensation for any losses suffered. The Purchaser is obliged to make payment in full even in the event of dispute. Barring agreement to the contrary, it is not permissible to settle payment with any credits that may exist in relation to **ZEPHIR**.

5. Retention of title.

ZEPHIR shall retain title in the Products sold until it has received full payment of the agreed price from the Purchaser. Until that time the Products shall remain the exclusive property of **ZEPHIR**. It remains understood, however, that all risks and expenses relating to the Products become the concern of the Purchaser from the time of delivery onwards. The Purchaser is obliged to notify **ZEPHIR** promptly of any claims by third parties on the Products which are subject to retention of title, and of any rights granted. The Purchaser undertakes to do what is necessary to constitute a valid retention of title, or to set up a similar form of guarantee in favour of **ZEPHIR**.

6. Warranty, obligation to check the Products and limitation of liability.

ZEPHIR, unless otherwise agreed by the Parties, grants a warranty to the Purchaser only in respect of defects in material and workmanship which render the Products unsuitable for use or appreciably reduce their value, with a duration of:

- Diesel and battery operated machines (LOK): 12 months from date of delivery or 2000 hours.
- Battery operated machines (CRAB): 24 months from date of delivery or 1500 hours.

The warranty is to be considered as null after reaching

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one of the aforesaid terms, whichever comes first. The warranty shall consist exclusively, at **ZEPHIR**'s option, of repair or replacement, to be performed by and at the expense of **ZEPHIR** itself, of structural and other components of the Products which prove to be faulty or non-conforming as a result of original

shall have the right to require the Purchaser to promptly return the defective parts.

The warranty does not cover parts subject to normal wear, nor damage caused by incorrect or inadequate maintenance or caused by accidental breakings, incorrect operation by the Purchaser's personnel, use of unsuitable raw materials, mistreatment or neglect, excessive utilisation of the devices, damage or deterioration caused or aggravated by failure to suspend use of the goods in the event of technical problems or surges in electrical voltage or working temperature, or by any other cause not directly attributable to **ZEPHIR**. The warranty does not apply to goods, parts or components not manufactured by **ZEPHIR**. **ZEPHIR** will pass along to the Purchaser the warranty **ZEPHIR** receives, if any, from the manufacturer of such goods, parts or components, but only to the extent allowed by such manufacturer.

The labour and any travelling expenses required for the repair is excluded from the warranty.

The warranty is invalidated if equipment or devices or spare parts not supplied by **ZEPHIR** are fitted to the Products, or if modifications are made without prior written consent from **ZEPHIR** or by personnel not authorised by **ZEPHIR**.

The warranty is invalidated if maintenance has been carried out by persons not designated by **ZEPHIR**, and **ZEPHIR** shall not be liable for defects and damages caused as a result of maintenance operations carried out without prior authorisation by **ZEPHIR**.

Maintenance operations on the Products must be carried out exclusively by persons designated and authorised by **ZEPHIR**, in compliance with the foreseen maintenance intervals.

The warranty under this Agreement is in lieu of any warranty or liability provided for by law, and excludes any other liability of **ZEPHIR**, which may arise from the Products, including those resulting from failure to produce or reduced production, as well as indirect or consequential losses (e.g. loss of profit).

The warranty is conditional, on pain of invalidation, on defects being notified by the Purchaser in writing to **ZEPHIR**, within 8 (eight) days from the time when the Purchaser discovers them, and on an express request for warranty intervention being made. Failure to send the report within the above time-limit shall result in the

defects. Delivery of parts despatched as replacements shall be effected ex-works (EXW Incoterms 2020). **ZEPHIR** will arrange the replacement or repair of the defective parts in as short a time as possible, to be decided from time to time between the parties, and

extinction of any claim against **ZEPHIR** arising from the sale contract.

In all cases **ZEPHIR** shall have the right to carry out, or have carried out, checks and inspections of the Products in order to ascertain the fault and whether it is attributable to the actions of **ZEPHIR**.

7. Intellectual property.

The Purchaser acknowledges and agrees that no license or proprietary interest, either express or implied, is granted to the Purchaser by **ZEPHIR** to use any of the trademarks owned or used by **ZEPHIR** or to use any of the intellectual property rights.

The Purchaser shall not take any action which could jeopardize **ZEPHIR**'s rights on the trademarks and in particular shall refrain from registering any of the trademarks and/or the intellectual property rights or internet domains confusingly similar with a **ZEPHIR**'s trademark and/or intellectual property right.

Any use of the Trademarks by the Purchaser shall be submitted to **ZEPHIR**'S prior written consent.

The Purchaser undertakes to refrain from conducting any kind of reverse engineering on the Products.

8. Force Majeure.

Cases of force majeure of any kind, provisions by the authorities or impediments of other kinds which are not under **ZEPHIR**'s control and which reduce, retard, obstruct or prevent the fabrication, despatch or delivery of the Products, shall exempt **ZEPHIR** from commitments which it has undertaken, for the duration of and in proportion to the gravity of the impediment. If, following a case of force majeure or impediments beyond **ZEPHIR**'s control, supply or acceptance is deferred by more than 90 (ninety) days, both **ZEPHIR** and the Purchaser are authorised to withdraw from the contract. If the sources of supply totally or partially fail, **ZEPHIR** shall not be obliged to buy from other than its usual suppliers.

9. Assignment of the contract and of the rights and obligations arising from it.

Total or partial assignment of the contract and/or of the rights and obligations arising from it in relation to **ZEPHIR** is prohibited, unless the latter has given prior and explicit agreement in writing.

10. Applicable law and arbitration.

Unless derogated by agreement to the contrary between the Parties, the laws of the Italian Republic apply to all contracts signed by **ZEPHIR**.

Any dispute arising from or in connection with this Agreement shall be finally settled by arbitration in accordance with the Rules of the Milan Chamber of Arbitration, by a sole arbitrator, appointed in

accordance with the Rules and applying the governing law of this Agreement. Such arbitration shall be conducted in Milan, Italy. All submissions and awards in relation to arbitration under this Agreement shall be made in English and all arbitration proceedings and all pleadings shall be in English.

11. **LIMITATION OF LIABILITY.**

IN NO EVENT SHALL ZEPHIR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE GOODS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNT PAID TO SELLER FOR THE PORTION OF THE GOODS WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF USE, REVENUE OR PROFIT OR FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

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Date: _____

Signed by: _____

(Name)
(Function)

Pursuant to and for the effects of sections 1341 and 1342 of the Italian Civil Code, the Purchaser declares that it is fully aware and that it specifically approves clauses 1; 3; 4; 5; 6; 9; 10 of these general terms and conditions of sale.

Date: _____

Signed by: _____

(Name)
(Function)

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